

1 THE HONORABLE ROBERT S. LASNIK
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLOTTE WINELAND, Individually, and
SUSAN WINELAND, as Personal Representative
of the Estate of JOHN DALE WINELAND,
Deceased,

Plaintiffs,
v.

AIR & LIQUID SYSTEMS CORPORATION
(sued *individually and as successor-by merger to*
BUFFALO PUMPS, INC.);
ALFA LAVAL, INC. (*sued individually and as*
successor-in-interest to DELAVAL
SEPARATOR COMPANY *and* SHARPLES
INC.);
ANCHOR/DARLING VALVE COMPANY;
AUBURN TECHNOLOGY, INC. (*f/k/a* ALCO
POWER INC., *sued as successor-in-interest to*
AMERICAN LOCOMOTIVE COMPANY *and*
ALCO PRODUCTS, INCORPORATED);
BW/IP, INC. *and its wholly owned subsidiaries;*
CARRIER CORPORATION;
CBS CORPORATION (*f/k/a* VIACOM, INC.,
successor by merger with CBS CORPORATION
f/k/a WESTINGHOUSE ELECTRIC
CORPORATION, *successor-in-interest to* BF
STURTEVANT);
CLA-VAL CO.;
CLEAVER-BROOKS, INC. *f/k/a* AQUA CHEM,
INC., *d/b/a* CLEAVER-BROOKS DIVISION;
CRANE CO.;

No. 19-cv-00793RSL

CONSOLIDATED COMPLAINT FOR
WRONGFUL DEATH AND
SURVIVORSHIP

JURY DEMAND

1 **FLOWSERVE CORPORATION** *f/k/a THE*
 2 **DURIIRON COMPANY, INC.;**
 3 **FLOWSERVE US, INC.** (*sued as successor-in-*
 interest to ANCHOR DARLING VALVE
 4 **COMPANY, BW/IP INTERNATIONAL, INC.,**
 DURCO INTERNATIONAL, and EDWARD
 VALVE, INC.);
 5 **GARDNER DENVER, INC.** *f/k/a GARDNER*
 DENVER MACHINERY, INC.;
 6 **GENERAL ELECTRIC COMPANY;**
 7 **IMO INDUSTRIES, INC.** (*sued individually and*
 as successor-in-interest to DELAVAL STEAM
 TURBINE COMPANY and DELAVAL, INC.);
 8 **INVENSYS SYSTEMS, INC.** (*sued individually*
 and as successor-in-interest to ROBERTSHAW
 CONTROLS COMPANY d/b/a FULTON
 SYLPHON VALVES);
 9 **INGERSOLL RAND COMPANY;**
 10 **THE NASH ENGINEERING COMPANY;**
 11 **PUGET SOUND COMMERCE CENTER, INC.**
 f/k/a TODD SHIPYARDS CORPORATION;
 12 **ROBERTSHAW CONTROLS CO.** *d/b/a*
 FULTON SYLPHON VALVES;
 13 **SYD CARPENTER, MARINE**
 CONTRACTOR, INC.;
 14 **TACO, INC.;**
 15 **TYCO INTERNATIONAL (US) INC.** (*sued*
 individually and as successor-in-interest to
 KUNKLE VALVE CO.);
 16 **VELAN VALVE CORPORATION;**
 17 **WARREN PUMPS, LLC** (*sued individually and*
 as successor-in-interest to QUIMBY PUMP
 COMPANY, INC.);
 18 **THE WM. POWELL COMPANY**
 and
 19 **DOES 1-350 INCLUSIVE;**

Defendants.

I. PARTIES

21 1.1 Plaintiff Susan Wineland, Personal Representative of the estate of Decedent John Dale
 22 Wineland, resides in California.

23 1.2 Plaintiff Charlotte Wineland is the surviving wife of Decedent John Dale Wineland and
 is suing on behalf of her individual claim for loss of consortium.

1 1.3 Plaintiffs request a jury demand as permitted under Local Civil Rule 38 and Federal
 2 Rule of Civil Procedure (FRCP) 38.

3 1.4 The Defendants are corporations incorporated and with their principal places of
 4 business outside the State of Washington.

5 1.5 Defendants and/or their predecessors-in-interest (hereinafter collectively referred to as
 6 “Defendants”) are corporations who, at all times relevant herein, manufactured, sold, produced,
 7 distributed or supplied asbestos-containing products or products that were used in conjunction with
 asbestos.

9 II. JURISDICTION

10 2.1 Plaintiffs’ claims in this case arise out of or relate to Defendants’ contacts with
 11 Washington that arose or existed at the time of Mr. Wineland’s asbestos exposure.

12 2.2 This is a consolidation of two actions, one filed by Plaintiffs in this Court alleging diversity
 13 jurisdiction, and another filed by Plaintiffs in state court which was removed by certain defendants
 14 alleging federal question jurisdiction under 28 U.S.C. § 1331. At least some defendants allege as a
 15 defense that they were acting under an officer of the United States pursuant to 28 U.S.C. § 1442(a)(1),
 16 and as such this action arises under the Constitution, laws, or treaties of the United States within the
 meaning of 28 U.S.C. § 1331, giving this Court jurisdiction.

17 III. FACTS

18 3.1 Plaintiffs’ Decedent, John Dale Wineland, was a fireman and engineman while
 19 serving in the United States Navy from 1963 through 1980. He worked with Defendants’
 20 equipment aboard the USS Dynamic (MSO-432) from 1963 through 1966; the USS Pledge
 21 (MSO-492) from 1966 through 1967; the USS Loyalty (MSO-457) from 1970 through 1972;
 22 the USS Tuscaloosa (LST-1187) from 1972 through 1974; and the USS Esteem (MSO-438)
 23 from 1978 through 1980. Decedent John Dale Wineland worked at several shipyards,
 including Lake Union Drydock Company in Seattle, Washington; Puget Sound Naval

1 Shipyard in Bremerton, Washington; and Todd Shipyard in Seattle, Washington.

2 3.2 An engineman, Decedent John Dale Wineland was tasked with operating and
 3 maintaining the equipment aboard these and other vessels, including but not limited to
 4 generators, pumps, turbines, forced draft blowers, and valves. This equipment was designed
 5 by the manufacturers to work with asbestos-containing components (gaskets, packing, and
 6 insulation) that would wear-out and have to be replaced on a routine basis. Additionally, this
 7 equipment was designed and intended to be insulated with asbestos-containing insulation.
 8 The equipment would not function as intended without the asbestos-containing components
 9 or asbestos-containing insulation. Decedent John Dale Wineland was exposed to asbestos
 10 from asbestos-containing components incorporated into this equipment and asbestos
 11 containing insulation while performing routine maintenance in machine spaces, including
 engine rooms, aboard the ships on which he served.

12 3.3 These asbestos-containing components and/or insulation were supplied with
 13 the equipment when it was installed new aboard the vessel. Replacement parts would be
 14 supplied by the equipment manufacturer in four ways: (1) with the purchase of the original
 15 equipment by the U.S. Navy; (2) by direct shipment to the ship or shipyard where repairs or
 16 maintenance were being performed; (3) through shipment to the regional Naval Supply
 17 Centers; or (4) by shipment to the U.S. Navy's Inventory Control Point in Mechanicsburg,
 Pennsylvania.

18 3.4 As a direct and proximate result of his exposure to asbestos products as
 19 described above, Decedent John Dale Wineland developed and was diagnosed with
 mesothelioma, a fatal cancer of the lining of the lung caused by asbestos exposure.

20 3.5 Plaintiffs provide the following information:

22 A. Specific Disease: Mesothelioma

23 B. Date of Diagnosis: On or about April 6, 2018

24 C. Occupations: Navy Engineman

1 D: Dates of Employment: US Navy, 1963 through 1980
2
3 E. Military: US Navy:
4 USS Dynamic (MSO-432) 1963-1966
5 USS Pledge (MSO-492) 1966-1967
6 USS Loyalty (MSO-457) 1970-1972
7 USS Tuscaloosa (LST-1187) 1972-1974
8 USS Esteem (MSO-438) 1978-1980
9 Harbor Boat, Terminal Island, Los Angeles, California
10 Lake Union Drydock Company, Seattle, Washington
11 Puget Sound Naval Shipyard, Bremerton, Washington
12 Todd Shipyard, Seattle, Washington
13
14 F: Approximate dates of 1963 through 1980
15 exposure:
16

IV. LIABILITY

17 4.1 Plaintiffs claim liability based upon the theories of product liability, including strict
18 product liability under Section 402A of the Restatement (Second) of Torts, and negligence. The
19 liability-creating conduct of Defendants consisted, inter alia, of negligent and unsafe design;
20 failure to properly inspect, test, warn, instruct, monitor and/or recall; failure to substitute safe
21 products; producing, marketing or selling unreasonably dangerous or extra-hazardous and/or
22 defective products, products not reasonably safe as designed, products not reasonably safe for lack
23 of adequate warning, products with misrepresentations of product safety, and/or products which
were specifically designed for asbestos-containing materials such that no other material could be
utilized in those systems.

4.2 With regard to the naval equipment manufacturers of compressors, pumps, valves,
engines, generators, turbines, motors, steam traps, and other equipment [hereinafter, “Equipment
Defendants”], these defendants designed, intended, specified, incorporated into, and required the
use of asbestos gaskets, packing, and insulation in and on their equipment and/or they sold
replacement asbestos parts that were required for their equipment to operate at high temperatures
or high pressures and the routine maintenance and repair of that equipment exposed Decedent to
asbestos dust.

1 4.3 The Decedent relied on the Equipment Defendants' instructions to warn him of the
 2 dangers of the products they instructed him to use with their products. The Equipment Defendants
 3 either possessed actual knowledge of the dangers of asbestos or should have known of those
 4 dangers yet failed to warn Decedent. The Equipment Defendants knew or should have reasonably
 5 foreseen that their equipment would require routine repairs and maintenance that would cause end-
 6 users like Decedent to be exposed to harmful asbestos dust.

7 4.4 The Equipment Defendants manufactured, rebranded, distributed, sold, and otherwise
 8 placed into the stream of commerce various asbestos-containing products, including, but not
 9 limited to, asbestos-containing compressors, pumps, valves, engines, generators, turbines, motors,
 10 steam traps, and other equipment. Defendants' asbestos-containing compressors, pumps, valves,
 11 engines, generators, turbines, motors, steam traps, and other equipment contained, among other
 12 things, asbestos-containing gaskets, packing, cloth, blankets, or board when sold, which were
 13 designed, expected and intended to wear out and be replaced on a regular basis during the lifetime
 14 of the equipment. Furthermore, Defendants knew, expected, and intended that the asbestos-
 15 containing components of its compressors, pumps, valves, engines, generators, turbines, motors,
 16 steam traps, and other equipment were designed, expected, and intended to wear out and be
 17 replaced during the useful lifetime of these compressors, pumps, valves, engines, generators,
 18 turbines, motors, steam traps, and other equipment and would be replaced with additional
 19 asbestos-containing replacement parts and that the hazards to the consumer working with or around
 20 the asbestos-containing replacement parts would be identical to those of working with the original
 21 parts. Finally, Defendants profited from selling asbestos-containing pumps, valves, turbines,
 22 compressors and other equipment that were designed to outlive the first asbestos-containing
 23 gaskets, packing, blankets, cloth, and boards that were provided with them. That is, by designing
 and manufacturing a piece of equipment whose body, engine and other components were designed
 and constructed to outlive the first set of asbestos-containing gaskets, packing, blankets, cloth, and

1 board supplied with the original piece of equipment, Defendants were able to sell their asbestos-
 2 containing compressors, pumps, valves, engines, generators, turbines, motors, steam traps, and
 3 other equipment for far more money and profit than they would have been able to sell such
 4 equipment that only lasted as long as the first set of asbestos-containing gaskets, packing, blankets,
 5 cloth, and board. Additionally, the Defendants insured against the dangers of the expected and
 6 intended uses of their asbestos-containing compressors, pumps, valves, engines, generators,
 7 turbines, motors, steam traps, and other equipment, including but not limited to the dangers at
 8 issue in this case.

9 4.5 Most specifically with respect to Plaintiffs' state tort law failure-to-warn claims,
 10 Plaintiffs allege that no U.S. agency, officer, or person prohibited or forbid any Defendant in this
 11 case from issuing and placing warnings on or with its products. Such a showing is mandatory for
 12 any defendant to meet the *Boyle* test. All such claims that legitimately implicate such a defense, in
 13 the unlikely event that they exist and are factually supported, are not asserted and are hereby
 14 expressly and preemptively disclaimed.

15 4.6 Moreover, as discussed in *In re Hawaii Federal Asbestos Case*, 960 F.2d 806 (9th Cir.
 16 1992) and consistent with the record presented in that case, there is simply no admissible evidence
 17 that the U.S. Navy ever precluded or constrained any equipment manufacturers' ability to warn
 18 end-users, like Decedent.

19 4.7 To the contrary, MIL-STD-129, the Navy's standard on labeling, *required* equipment
 20 contractors with the Navy to warn of harmful dusts and hazardous substances which the equipment
 21 contractors chose not to do.

22 4.8 Moreover, the U.S. Government's official position in litigation is that MIL-STD-129
 23 permitted Navy contractors to warn about asbestos. GAP Corp. sued the United States in 1983 for
 "implied contractual indemnification for damages sustained as a result of actions by or on behalf
 of shipyard workers to recover for injuries or death due to exposure to asbestos." *GAF Corp. v.*

1 *United States*, 19 Cl. Ct. 490, 490–91 (Cl. Ct. 1990), *aff'd*, 931 F.2d 947 (Fed. Cir.), *cert. denied*,
 2 502 U.S. 1071 (1992). Therefore, no conflict exists between the duties to warn under state law.
 3
 4

V. DAMAGES

5 5.1 As a proximate result of Defendants' negligence and/or product liability, Plaintiffs'
 6 Decedent John Dale Wineland sustained pain, suffering, disability, and subsequent death in an
 7 amount not now known, but which will be proven at trial.

8 5.2 Plaintiffs' Decedent John Dale Wineland also sustained medical expenses and
 9 economic losses in an amount to be proven at trial.

10 5.3 Plaintiff Charlotte Wineland brings this cause of action against all Defendants for the
 11 loss of spousal relationship as a result of Decedent John Dale Wineland's illness and subsequent
 12 death, including a loss of emotional support, love, affection, care, society, services, consortium,
 13 companionship, and assistance in an amount to be proven at trial. Plaintiff Charlotte Wineland has
 14 also sustained loss of economic support and services due to Decedent John Dale Wineland's illness
 15 and subsequent death, in an amount to be proven at trial.

16 5.4 Plaintiff Susan Wineland and Decedent's other children Corrine Wineland, Isaiah
 17 Wineland, and Zachary Wineland have sustained loss of a parental–child relationship as a result
 18 of John Dale Wineland's illness and death, including the loss of emotional support, love, care,
 19 society, consortium, companionship, maintenance, support, advice, counsel and guidance in an
 20 amount to be proven at trial.

21 Plaintiffs and the estate are entitled to damages for Decedent John Dale Wineland's
 22 physical pain and suffering he endured up until his death; mental anguish he suffered due to his
 23 impending death; physical impairment and loss of enjoyment of life; disfigurement; reasonable
 24 and necessary medical, funeral and other expenses incurred as a result of his mesothelioma; and
 25 the mental anguish of each of the family members for the emotional damage to the family caused
 26 by Decedent John Dale Wineland's suffering and subsequent death.

1 WHEREFORE, Plaintiffs pray for judgment against the Defendants and each of them as
2 follows:

3 1. For general and special damages specified above, including pain, suffering, mental
4 anguish, disability, loss of consortium, and wrongful death;

5 2. For all wrongful death and survival damages recoverable by Washington law,
6 including all damages provided for in RCW 4.20.046 and RCW 4.20.060;

7 3. Past and future loss of care, love, maintenance, services, support, advice, counsel,
8 society, and consortium, which Plaintiff Charlotte Wineland and Decedent's children, Corrine
9 Wineland, Susan Wineland, Isaiah Wineland, and Zachary Wineland, would have received from
10 Decedent John Dale Wineland before his illness and death caused by his exposure to asbestos;

11 4. For medical and related expenses, economic losses, and funeral expenses, all of
12 which will be proven at the time of trial;

13 5. For Plaintiffs' costs and disbursements herein;

14 6. For prejudgment interest in the amount to be proven at trial; and

15 7. For such other relief as the Court deems just.

16 DATED this 2nd day of October, 2019.

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1 I hereby declare under penalty of perjury under the laws of the State of Washington that on
 2 October 2, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF
 3 system, which will send notification of such filing to the below listed counsel:

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15	Syd Carpenter, Marine Contractor, Inc. J. Scott Wood, WSBA No. 41342 Diane C. Babbitt, WSBA No. 17956 Foley & Mansfield 999 Third Ave, Ste 3760 Seattle, WA 98104 Telephone: (206) 456-5056 Email: asbestos-sea@foleymansfield.com	() () () () (X) ()	Legal Messenger Facsimile U.S. Mail Federal Express E-Mail Hand Deliver
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20	TACO, Inc. Jeanne F. Loftis, WSBA No. 35355 Lorianne Hanson, WSBA No. 53388 Bullivant Houser Bailey PC 300 Pioneer Tower 888 SW Fifth Avenue Portland, OR 97204-2089 Telephone: (503) 228-6351 Fax: (503) 295-0915	() () () () (X) ()	Legal Messenger Facsimile U.S. Mail Federal Express E-Mail Hand Deliver
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3 Email: asbestos-pdx@bullivant.com		
4 Email: asbestos@bullivant.com		

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Milwaukee Valve Company, Inc.	()	Facsimile
10 Mark B. Tuvim, WSBA No. 31909	()	U.S. Mail
11 Kevin J. Craig, WSBA No. 29932	()	Federal Express
12 Trevor J. Mohr, WSBA No. 51857	(X)	E-Mail
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16 Phone: (206) 695-5100		
17 Fax: (206) 689-2822		
18 Email: seaasbestos@grsm.com		

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The WM. Powell Company	()	Facsimile
19 Brian Smith, WSBA No. 45930	()	U.S. Mail
20 James D. Hicks, WSBA No. 36126	()	Federal Express
21 J. Scott Wood, WSBA No. 41342	(X)	E-Mail
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25 Telephone: (206) 456-5056		
26 Email: asbestos-sea@foleymansfield.com		

Warren Pumps, LLC	()	Legal Messenger
19 Allen Eraut, WSBA No. 30940	()	Facsimile
20 Rizzo Mattingly Bosworth, P.C.	()	U.S. Mail
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22 Portland, OR 97201	(X)	E-Mail
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26 Email: asbestos@rizzopc.com		

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